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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 1677 OF 2001

Shantaram Kalya Gaikwad & ors. .. Petitioners

V/s

The Special Land Acquisition Officer
and ors. .. Respondents

Mr. D.S. Sawant for the petitioners.
Mr. R.S. Khadapkar, A.G.P. for the respondent.
Mr. S.S. Kulkarni for the intervener.

CORAM: D.G. KARNIK, J.

DATED : 13TH NOVEMBER 2006

ORAL JUDGMENT:

1. Heard the counsel. I have also heard Mr. Kulkarni for the heirs of Mr. Trimbak Joma Thakur, the respondent in First Appeal No. 738 of 1994 and who claim to be interested in the land in question.

2. The land bearing Survey No. 437/81 admeasuring 63 Ares situated at Village Rodpali, Taluka Panvel, District Raigad (hereinafter referred to as "suit land") is the subject matter of the dispute between the parties. The suit land was acquired by the

Government of Maharashtra for the new Bombay Project. A notification for acquisition of the suit land was published under section 4 of the Land Acquisition Act in the Maharashtra Government Gazette on 3rd February 1970 and a corrigendum was published on 5th September 1970. Necessary public notices were also issued. After holding an enquiry under section 5A of the Land Acquisition Act, a declaration under section 6 was published in the Maharashtra Government Gazette dated 8th December 1972. Before the Land Acquisition Officer, one Mr. Kalya Gaikwad, under whom the revision petitioners claim, contended that he was the owner of the suit land. Similarly, Mr. Trimbak Joma Thakur, whose heirs have sought leave to intervene in this revision, also contended that he was the owner of the suit land. Both of them appeared before the Special Land Acquisition Officer and claimed compensation for acquisition of the suit land. The Special Land Acquisition Officer passed an award fixing compensation for acquisition of the suit land. In the award he held that Kalya Gana Gaikwad and Ganya Joma Patil who were claiming to be owners of the suit land were not entitled to any compensation but the entire amount of the compensation be paid to Trimbak Joma Thakur. Being dissatisfied with the amount of compensation awarded, Trimbak Joma Thakur made an application

under section 18 of the Land Acquisition Act for making a reference to the District Court. Accordingly, the Collector made the reference and the District Court in reference No. 721 of 1987 enhanced the amount of compensation. Aggrieved by the enhancement of the compensation, the State has filed an appeal bearing First Appeal No. 738 of 1994 in this Court which is pending.

3. Aggrieved by the award of the Special Land Acquisition Officer awarding the entire amount of compensation to Trimbak Joma Thakur and rejecting their claim of ownership or being interested in the suit land, the present petitioners, who claim to be heirs of Kalya Gana Gaikwad filed a suit, bearing Regular Civil Suit No. 21 of 1996 in the Court of Civil Judge, Senior Division, at Panvel, for a declaration that the award dated 22nd September 1981 passed in favour of Trimbal Joma Thakur was illegal and be set aside or cancelled. They further claimed declaration that they were the owners of the suit land and, therefore, entitled for the compensation and/or 12.5% of the developed land in accordance with the scheme of CIDCO to grant on lease same developed land to the persons whose lands were acquired. Learned Civil Judge, Senior Division, Panvel decreed the suit and held that the appellants were the legal owners of the suit land and

were entitled to the compensation and other benefits arising from the acquisition of the suit land and restrained the Government from allotting 12.5% of the developed land to the heirs of Trimbak Joma Thakur in accordance with the scheme of CIDCO. He further held that the award dated 22nd September 1981 passed by the Special Land Acquisition Officer in favour of Trimbak Joma Thakur was illegal and invalid. He further directed the State Government to declare a fresh award in respect of the suit land. The State Government did not file any appeal and accepted the decision. Following the direction of the Civil Court, the Special Land Acquisition Officer passed a fresh award on 6th July 2001 awarding compensation for the suit land to the petitioners. Being aggrieved by the amount of compensation awarded in the second award dated 6th July 2001, the petitioners made an application to the Special Land Acquisition Officer under section 18 of the Land Acquisition Act requesting him to make a reference to the District Court. By an order dated 31st August 2001, the Special Land Acquisition Officer rejected the application and declined to make a reference on the ground that on the basis of the first award dated 22nd September 1981, a reference was made to and decided by the District Court and hence second reference in respect of the same land was not maintainable. That order is impugned in this revision application.

4. Learned counsel for the petitioners submitted that the Special Land Acquisition Officer erred in declining to make a reference under section 18 of the Land Acquisition Act. He submitted that the first award was declared to be void by the order dated 7th October 1997 made by the Civil Judge, Senior Division in Regular Civil Suit No. 21 of 1996. The Special Land Acquisition Officer as well as the heirs of Trimbak Joma Thakur were parties to the suit. None of them had filed an appeal. That decision was binding on the parties and had become final. The Government had also accepted the said decision and proceeded to pass a fresh award on 6th July 2001. The first award had therefore ceased to exist in the eye of law. The Special Land Acquisition Officer, therefore could not have refused to make the reference on the ground that the reference against the first award was already decided. In support of his submissions, the learned counsel for the petitioners referred to and relied upon a decision of the Supreme Court in *S. Harcharan Singh vs. Union of India, reported in AIR 1991 SC 945.* Therein it was held that the only requirement under section 18 of the Land Acquisition Act was to make a written application to the collector to refer the matter for determination of the Court. Once the request was made, the Collector must make a

reference.

5. Per contra, Mr. Kulkarni, learned counsel appearing on behalf of the intervener submitted that the Land Acquisition Act was a complete code in itself. The Land Acquisition Act was complete code in itself and the jurisdiction of the civil court to take cognizance of a suit challenging acquisition or an award was barred by the necessary implication. Civil Court would not have jurisdiction to set aside an award on any ground whatsoever.. The only right of a person aggrieved by acquisition or an award is to approach constitutional courts, namely the High Court and the Supreme Court under Article 226 and 32 respectively of the Constitution of India. He further submitted that since the Civil Court had no jurisdiction to entertain and try the suit, viz. Regular Civil Suit No. 21 of 1996, the decision therein dated 7th October 1997 was nullity and was required to be ignored. Relying upon a decision of the Supreme Court in the case of *Sushil Kumar Mehta vs. Gobind Ram Bohra, reported in (1990) 1 SCC 193,* he submitted that it was not necessary to file an appeal against a decision/decree which is without jurisdiction and a nullity. The nullity of a decree can be set up whenever and wherever the decree is put up against a party. Since the decree in Regular Civil Suit

No. 91 of 1996 was a nullity, it was to be ignored and it was not necessary for him to file the appeal against the said decision. Further action of the Special Land Acquisition Officer in passing the second award in pursuance of the direction issued in Regular Civil Suit No. 21 of 1996 was also invalid and null and void and was required to be ignored. He further submitted that the Collector was right in refusing to make a reference as the second award was itself a nullity.

6. Learned AGP submitted that in view of the decision of the Supreme Court in *Laxmi Chand and others vs. Gram Panchayat, Kararia and ors, reported in (1996) 7 SCC 218*, the Civil Court had no jurisdiction to declare the award to be void. Therefore, the decision of the Civil Court in Regular Civil Suit No.21 of 1996 was not only bad in law but was without jurisdiction and was required to be ignored. He further submitted that the Special Land Acquisition Officer erred in passing the second award dated 22nd July 2001 in pursuance of the directions given on 7th October 1997 by the Civil Court. The second award dated 6th July 2001 was invalid and was not non-est as being without jurisdiction. Therefore, the order passed by the Special Land Acquisition Officer dated 31st August 2001 rejecting to make a reference was proper and correct.

7. In *State of Bihar vs. Dhirendra Kumar and ors (1995) 4 SCC 229*, the Supreme Court has considered whether the civil court has jurisdiction to go into the question of validity or legality of a notification under section 4(1) or of a declaration under section 6 of the Land Acquisition Act. The Supreme Court has held that the Land Acquisition Act is a complete code in itself and by necessary implication the power of a civil court to take cognizance of a suit is excluded and the civil court has no jurisdiction to go into the question of validity or legality of a notification under section 4(1) and a declaration under section 6 of the Land Acquisition Act. Such cognizance can be taken only by the High Court under Article 226 of the Constitution of India and civil suit challenging the notification under section 4(1) or declaration under section 6 of the Land Acquisition Act.

8. Elaborating the principle further in the case of *Laxmi Chand and others Vs. Gram Panchayat, Kararia and ors, reported in (1996) 7 SCC 218,* the Supreme Court held that the scheme of the Land Acquisition Act was complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Land

Acquisition Act, by necessary implication stood barred. In paragraph no.3 of the decision, the Court observed:

> "It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court."

9. Supreme Court has clearly laid down that the civil court is devoid of jurisdiction to give declaration on the invalidity of the procedure followed under the Land Acquisition Act. In my view, the Civil Court has no jurisdiction to declare an award to be void. In view of this, the decision of Civil Court in Regular Civil Suit No.21 of 1996 must be held to be without jurisdiction.

10 It may be noted that the petitioners and their predecessor Kalya

Gana Gaikwad were not only aware of the acquisition proceeding but had taken part in the acquisition proceeding before the Special Land Acquisition Officer. Kalya had contended that he was the owner of the land. He filed an application on 31st January 1981 before the Special Land Acquisition Officer stating that he was a person interested in the land and its acquisition. He was accordingly, given due opportunity to substantiate his claim. Special Land Acquisition Officer's award inter alia states:

> "Shri Kalya Gana Gaikwad and Gana Joma Patil have filed complaint applications dated 13 January 1981 and 14 March 1981 respectively stating therein that they have interest in the land under acquisition. They have been given due opportunity for substantiate their claims."

11. Thus, petitioners or their predecessor in title clearly made a claim before the Special Land Acquisition officer and the claim was rejected. If the petitioners or their predecessors were in any way aggrieved by the decision of the Land Acquisition Officer they ought to have applied for a reference under section 30 of the Land Acquisition Act and if for any reason that remedy was not available, they ought to have approached this court in its writ jurisdiction.

Filing of a civil suit was not a proper course as the civil court lacked the jurisdiction to declare the award to be void. In *Abdullamiyan Abdulrehman Vs. Government of Bombay, reported in AIR (29) 1942 Bombay 257*, this Court has held that where a court lacks inherent jurisdiction the order passed by the court is nullity and it is not necessary for a party to file an appeal against the order which is a nullity. The party can set up defence of nullity whenever the order is presented against him. The order which is without jurisdiction is mere waste paper. In the present case, the Civil Court had inherent lack of jurisdiction. In the circumstances, it must be held that the decision dated 7th October 1997 rendered by Civil Judge, Senior Division in Regular Civil Suit No.21 of 1996 is a nullity and has to be ignored.

12. If the decision in Regular Civil Suit is a nullity, as held by me, any further action taken by the Special Land Acquisition Officer in pursuance of the said decision is also illegal and without jurisdiction. The declaration of the second award dated 6th July 2001 in favour of the petitioners in pursuance of the said decision was clearly illegal and without jurisdiction. Consequently the order refusing to make a reference cannot be faulted.

13. Learned AGP submitted that after award dated 22nd September 1981 was passed possession of the land was taken by the Government. The said land now vests in the Government under section 16 of the Land Acquisition Act. In these circumstances, it was wholly inappropriate for the Civil Court to grant declaration that the petitioners were owners of the land and direct the Special Land Acquisition Officer to declare a fresh award. The effect of such direction would be to divest the title of the Government which the Civil Court had no jurisdiction to do.

14. Since the second award itself was illegal and without jurisdiction the order passed by the Special Land Acquisition Officer refusing to make a reference was clearly a correct order. For these reasons, there is no merit in the revision application which is hereby dismissed. Revision applicants shall pay cost of intervenor.

(D.G. KARNIK, J.)